IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2890 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISMAIL MAHMADBHAI SUMRA - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Applicant(s) : 1,
MR HL JANI for Respondent(s) : 1,
MR MUKESH A PATEL for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/09/2005

ORAL JUDGMENT

1. The petitioner/original accused No 2 has filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the impugned order of issuing process against the petitioner rendered in

Criminal Case No. 50 of 1987 holding it as illegal, improper and bad in law.

2.This court has passed an order on 17.01.90 issuing rule and staying the proceedings against the petitioner/accused No. 2.

3.It is the case of the petitioner that the main allegation made by the respondent No. 2/ original complainant is that he has purchased the truck No. GRT 8965 from one Mr Mahendrakumar Chaturbhai Prajapati for a consideration of Rs 1,11,000/- and he was handed over the possession of the said truck. It was also averred in the said complaint that the said truck was sold to respondent No. 3 on 17.12.1986 for a consideration of Rs 1,47,000/- and the respondent No. 3 had given faith to the respondent No. 2 that he would pay the amount of the said truck. However the amount has not been paid by respondent No. 3 to respondent No. 2. It is also alleged in the said complaint that on inquiry the complainant found that the respondent no. 3 had sold the said truck to the petitioner and therefore the petitioner was implicated in the said complaint for committing the alleged offence for abetment by illegally possessing the said truck.

4.It is also stated that the petitioner came to know that a Special Civil Suit No. 60 of 1984 has been filed by

State Bank of India against Shri Mahendrabhai Chaturbhai Prajapati and others from whom the petitioner had purchased the truck by a written agreement. The petitioner therefore made an application before the learned Civil Judge(Senior Division) at Nadiad for joining as party in the said suit. In the said suit, Mr Mahendrakumar Chaturbhai has filed his reply to the application of the petitioner for being joined as party in the said suit on 10.08.1989. It is further stated that looking to the agreement and looking to the contents and admission made by the said Mahendrakumar Chaturbhai in his reply, it is very clear that the petitioner has purchased the truck in question directly from said Shri Mahendrakumar Chaturbhai and has paid certain amount to him taking over all liabilities for the dues of the bank which were required to be paid to the concerned bank. It is further stated that even thereafter the petitioner had paid from time to time different installments to the concerned bank through Demand Drafts was also paid towards repayment of loan which had been taken for the said truck GRT 8965. It is further submitted that the petitioner has not committed any offence whatsoever and the petitioner was wrongly implicated in the said complaint which was actually frivolous and vexatious.

5. Ms Krina Thakker, learned advocate appearing for Mr. Yogesh Lakhani, for the petitioner has submitted that even if the complaint and /or first information report is taken at its face value and accepted in its entirety, it does not constitute any offence whatsoever under the provisions of the Indian Penal Code and therefore the complaint is required to be quashed and set aside. She has further submitted that even otherwise the allegations made in the complaint show the contractual liability under the law of contract and therefore such liability being a civil liability, the criminal proceedings should be quashed against the petitioner and the learned Judicial Magistrate, First Class at Umreth ought to have dismissed the complaint on this ground only and therefore the criminal proceedings initiated against the petitioner and the issuance of process against the petitioner is liable to be quashed and set aside.

6. Mr. H.L. Jani, learned Assistant Public Prosecutor on the other hand has submitted that the complaint does disclose prima facie offence and it cannot be quashed while exercising powers under Section 482 of the Criminal Procedure Code.

7. After having heard the learned advocate and the learned Assistant Public Prosecutor, the court is of the view

that the complaint is filed in the year 1987 and the process was issued by the learned Judicial Magistrate First Class on 13.08.87. against issuance of the said process and for quashing of the complaint. The present petition is filed on 21st December, 1989. This court has granted stay against further proceedings in respect of the present petition. From that date onwards till this date nothing has happened. More than 15 years have passed. Because of the stay by this court the case would not have been proceeded with against the petitioner. While looking at the compliant as well as the averments made in the petition, the court is of the opinion that the petitioner would not have been involved in the alleged commission of the offence as the petitioner is said to have purchased the said truck directly from Mr. Mahendrakumar Chaturbhai and certain payments have also been made. The petitioner has also applied for joining as party in the suit filed by State Bank of India. Thus, the charge of abatement levelled against him has no substance. Even otherwise the dispute, if any, is of civil nature and there is no malafide intention or ill-motive of the petitioner behind the alleged transaction.

8. In the above view of the matter, the present complaint filed against the petitioner is quashed and set aside.

Rule made absolute. No order as to cost.

(K.A. PUJ, J.)

Divya//